

**United States Department of Labor
Employees' Compensation Appeals Board**

C.V., Appellant)	
)	
and)	Docket No. 07-1724
)	Issued: December 28, 2007
U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION CENTER, Dallas, TX,)	
Employer)	
)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 14, 2007 appellant filed a timely appeal of the Office of Workers' Compensation Programs' merit decision dated September 8, 2006 finding that she had not established an emotional condition causally related to her federal employment. She also timely appealed a June 5, 2007 nonmerit decision. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merit and nonmerit issues of this case.

ISSUES

The issues are: (1) whether appellant has met her burden of proof in establishing that she developed an emotional condition due to factors of her federal employment; and (2) whether the Office properly declined to reopen her claim for consideration of the merits under 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On August 1, 2005 appellant, then a 44-year-old clerk, filed an occupational disease claim alleging that she developed an emotional condition in 1992 due to her federal employment. She stated that she developed a “stress-related” emotional condition due to an improper removal from the employing establishment. Appellant stated that following arbitration she was reinstated with monetary loses. She alleged that harassment continued. Appellant stopped work on July 25, 2005.

In a statement dated July 26, 2005, appellant alleged that she was subject to pettiness and to charges which were misconceptions. She received inappropriate letters of warning, discussions, suspensions and an unjust removal. Appellant also attributed her emotional condition to surveillance by postal inspectors. She alleged that she developed severe headaches, panic attacks and ulcers.

Tim Schmitt, appellant’s supervisor, controverted her claim on the grounds that she requested the claim form during a predisciplinary meeting on July 25, 2005. He stated that appellant was charged with fraudulent time card activity, absence from her assigned work area without permission, absence without leave and failure to maintain a regular schedule. Mr. Schmitt stated that after he proposed to terminate appellant due to these charges, she alleged a stress condition.

In a letter dated August 24, 2005, the Office requested additional factual and medical evidence from appellant addressing her claimed condition. It allowed 30 days for a response.

By decision dated September 27, 2005, the Office denied appellant’s claim as she failed to submit the necessary medical evidence to establishing a *prima facie* case.

The employing establishment noted that appellant was assigned to a limited-duty position in a print shop shredding paper. Mr. Schmitt began looking for appellant in the print shop on July 11, 2005 but was unable to locate her until July 25, 2005. He then informed her of the predisciplinary meeting and appellant immediately requested a claim form.

Appellant requested an oral hearing on September 27, 2005. In a report dated September 13, 2005, Jean Williams, a licensed counselor, diagnosed chronic pain disorder, depression, anxiety and sleep disorder. Ms. Williams attributed appellant’s emotional conditions to her July 12, 2000 employment-related back injury. In a report dated October 31, 2005, Dr. Bagyalakshmi Arumugham, a Board-certified psychiatrist, stated that he provided treatment for work-related stress. On November 22, 2005 he stated that appellant believed that one of her supervisors had singled her out and had been harassing her since 1992. Dr. Arumugham diagnosed depression. In a note dated December 13, 2005, he diagnosed major depressive disorder and attributed this condition to a chronic pain secondary to work injury and the physical limitations due to pain are also contributing factors of her depression.

On March 9, 2006 appellant submitted additional new evidence. She alleged that she was harassed by a supervisor. Appellant noted that on July 12, 2000 she was injured at work and that postal inspectors watched her. She submitted requests for documentation to support leave, a

February 1, 2006 notification of a predisciplinary meeting, a March 1, 2006 notification of a second predisciplinary meeting and a September 17, 2005 notice of a predisciplinary interview. Appellant alleged harassment through a postal inspector investigation beginning October 11, 2005. She filed a grievance regarding Mr. Schmitt's decision to place her in an off-the-clock, nonduty, nonpay status on July 25, 2005.

In a statement dated March 24, 2006, appellant stated that she was not released from duty due to poor attendance, that the postal inspectors improperly charged her with unofficial medical travel refund request vouchers and earning extra income while receiving worker's compensation. She stated that these charges were dropped. Appellant attributed her emotional condition to the February 1, 2006 notice, a predisciplinary meeting. She stated that on July 25, 2005 she was placed in a nonwork status due to an allegation that she was working in an unassigned work location. Appellant stated that her first line supervisor, Lester Williams, verified that she was working in an appropriate location. She alleged that Mr. Schmitt instructed her to work in a unit that violated her work restrictions, that this instruction caused her to panic and resulted in her request for a claim form.

By decision dated May 9, 2006, the hearing representative denied appellant's claim finding that she had not substantiated a compensable factor of employment as causing her emotional condition. The hearing representative noted that appellant had not submitted any evidence substantiating improper disciplinary action or harassment by employing establishment personnel.

Appellant requested reconsideration on May 30, 2006. She reviewed the medical evidence in the record. Appellant then provided a list of eight disciplinary actions such as removals and suspensions which were rescinded. She also noted several postal inspector investigations. Appellant alleged harassment as a result of these incidents. She stated that she had provided copies of these disciplinary actions. Appellant submitted documents from various websites regarding depression and stress.

The employing establishment responded to appellant's request for reconsideration on August 15, 2006 and asserted that she had not established a compensable factor of employment as causing or contributing to her diagnosed emotional condition. On June 19, 2006 the arbiter denied appellant's grievance regarding her emergency placement in nonduty status without pay on July 15, 2005.

Appellant disagreed with the employing establishment's assessment of her claim on August 19, 2006 and alleged that she was subjected to inappropriate disciplinary actions, sexual harassment, false allegations of a threat against a supervisor, medical examinations scheduled by the Office in her back claim, interviews with the postal inspectors and proposed termination of her back claim by the Office.

By decision dated September 8, 2006, the Office reviewed appellant's claim on the merits and denied modification of its prior decisions. It found that she had not substantiated a compensable factor of employment which she felt caused or contributed to her diagnosed emotional condition.

Appellant submitted an appeal request form and indicated with a checkmark that she wished to request reconsideration. She submitted a copy of a discrimination complaint dated November 21, 1995 in which she alleged that she was improperly removed as the result of retaliation when she protested sexual harassment by Vernell Moss. On September 16, 1996 appellant was returned to work. She also submitted a letter dated May 15, 2007 from her union president disagreeing with the Office's conclusions and alleging that medical evidence was necessary.

By decision dated June 5, 2007, the Office declined to reopen appellant's claim for consideration of the merits finding that she failed to submit relevant new evidence or argument in support of her request for reconsideration.

LEGAL PRECEDENT -- ISSUE 1

Workers' compensation law does not apply to each and every injury or illness that is somehow related an employee's employment. There are situations where an injury or an illness has some connection with the employment but nevertheless does not come within the concept or coverage of worker's compensation. Where the disability results from an employee's emotional reaction to his regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.¹ On the other hand, the disability is not covered where it results from such factors as an employee's fear of a reduction-in-force or his frustration from not being permitted to work in a particular environment or to hold a particular position.²

Reactions to disciplinary matters such as letters of warning and inquiries regarding conduct pertain to actions taken in an administrative capacity and are not compensable until it is established that the employing establishment erred or acted abusively in such capacity.³ The fact that personnel actions were later modified or rescinded, does not in and of itself, establish error or abuse. Similarly, the fact that a claimant filed complaints and grievances does not substantiate the allegations contained therein and the settlement of such complaints and grievances does not establish error or abuse by the employing establishment.⁴ Stress from a claimant's pursuit of a claim before the Office does not constitute a compensable employment factor as the processing of a compensation claim bears no relation to appellant's regular or specially-assigned duties.⁵ For harassment or discrimination to give rise to a compensable disability, there must be evidence which establishes that the acts alleged or implicated by the employee did, in fact, occur. Mere perceptions of harassment or discrimination are not compensable under the Act.⁶

¹ 5 U.S.C. §§ 8101-8193.

² See *Thomas D. McEuen*, 41 ECAB 387, 390-91 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125, 129 (1976).

³ *Sherry L. McFall*, 51 ECAB 436, 440 (2000).

⁴ *Michael A. Salvato*, 53 ECAB 666, 668 (2002).

⁵ *Phillip L. Barnes*, 55 ECAB 426, 438 (2004).

⁶ *Reco Roncoglione*, 52 ECAB 454, 456 (2001).

ANALYSIS -- ISSUE 1

Appellant attributed her emotional condition claim to disciplinary actions including notification of predisciplinary meetings, suspensions and removals by the employing establishment. She submitted a list of suspensions and removals which resulted in her reinstatement. Appellant has not submitted any evidence that the employing establishment erred or acted abusively in these multiple predisciplinary and disciplinary actions. She merely noted that she had always been reinstated with back pay. As noted above, in order to establish that a disciplinary action is a compensable factor of employment, appellant must substantiate error or abuse on the part of the employing establishment.⁷ The only evidence that she submitted in support of her claim of error or abuse in these actions of the employing establishment was that she was reinstated. This fact alone is not sufficient to establish error or abuse on the part of the employing establishment.⁸

Appellant also alleged that her emotional condition was the result of erroneous or abusive investigations by the employing establishment. Investigations, which are an administrative function of the employing establishment, that do not involve an employee's regular or specially assigned employment duties are not considered to be an employment factor where the evidence does not disclose error or abuse on the part of the employing establishment.⁹ Appellant has not submitted the necessary evidence to substantiate that the employing establishment's investigations were abusive and she has therefore not substantiated this element of her claim as a compensable factor of employment.

Appellant attributed her current emotional condition to actions by the Office regarding her ongoing claim for an employment-related back injury. The Board has held that the processing of a compensation claim bears no relation to appellant's regular or specially-assigned duties.¹⁰ As this aspect of appellant's emotional condition does not involve her regular or specially-assigned duties, it cannot constitute a compensable factor of employment.

In addressing her emotional condition claim, appellant alleged that the foregoing events and actions constituted harassment by the employing establishment. While the employing establishment does not dispute that appellant was subjected to several disciplinary actions, there is no support in the record for appellant's assertion that these actions were not legitimate exercises of authority, but were instead efforts to harass her. The Board has held that perceptions of harassment or discrimination are not compensable under the Act.¹¹ As appellant has not submitted sufficient evidence that attempts at harassment occurred, she has not substantiated this compensable factor of employment. For the foregoing reasons, appellant has not established any

⁷ *McFall*, *supra* note 3.

⁸ *Salvato*, *supra* note 4.

⁹ *Beverly A. Spencer*, 55 ECAB 501, 510 (2004).

¹⁰ *Barnes*, *supra* note 5.

¹¹ *Reco Roncoglione*, 52 ECAB 454, 456 (2001).

compensable employment factors under the Act and, therefore, has not met her burden of proof in establishing that she sustained an emotional condition in the performance of duty.¹²

LEGAL PRECEDENT -- ISSUE 2

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,¹³ the Office's regulations provide that the evidence or argument submitted by a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) constitute relevant and pertinent new evidence not previously considered by the Office.¹⁴ When a claimant fails to meet one of the above standards, the Office will deny the application for reconsideration without reopening the case for review on the merits.¹⁵

ANALYSIS -- ISSUE 2

Appellant filed a timely request for reconsideration and submitted documentation in support of her request. She submitted a copy of a discrimination complaint filed against a supervisor for improper removal and the resulting return to work letter and a letter from her union president disagreeing with the Office's conclusions stating that medical evidence was necessary.

These documents do not constitute new, relevant and pertinent evidence or argument. The copy of the grievance and settlement does not include any admission of error or abuse by the employing establishment and as noted above does not by the mere reinstatement of appellant establish error or abuse.¹⁶ This evidence does not support or substantiate a compensable employment factor alleged by appellant and is not sufficient to require the Office to reopen appellant's claim for consideration of the merits.

The argument that additional medical evidence is required to establish appellant's claim as submitted by the union representative lacks a reasonably color of validity and is not relevant to the claim currently before the Board. As noted previously, in order to require the Office to address the medical evidence, a claimant must first establish a compensable factor of employment. As neither the Board nor the Office found that appellant has established a

¹² As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record. *See Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).

¹³ 5 U.S.C. §§ 8101-8193, § 8128(a).

¹⁴ 20 C.F.R. § 10.606(b)(2).

¹⁵ 20 C.F.R. § 10.608(b).

¹⁶ *Salvato*, *supra* note 4.

compensable factor, it is not necessary for the Office to review the medical evidence submitted in support of appellant's claim.¹⁷

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that she developed an emotional condition due to factors of her federal employment as she has not submitted the necessary factual evidence to substantiate a compensable factor of employment to which she attributed her condition. The Board further finds that the Office properly declined to reopen appellant's claim for consideration of the merits on June 5, 2007.

ORDER

IT IS HEREBY ORDERED THAT the June 5, 2007 and September 8, 2006 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: December 28, 2007
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board

¹⁷ As appellant has not established any compensable employment factors, the Office and the Board need not consider the medical evidence of record. *See Krzycki, supra* note 12.